IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.502 OF 2005

Mr Pandit K. Balkawde ...Appellant
Vs.
Pune Municipal Corpn. Pune & Anr. ...Respondents

Mr Aniruddha Pratinidni for the Appellant.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : APRIL 12, 2006.

P.C.:

1. On 05th April, 2006 the Second Appeal was fully argued for admission. However, order was not passed as the Advocate for the Appellant sought time to take instructions. Accordingly, the Appeal was ordered to be placed today at 03.00 p.m. on production matter board. None appears for the Appellant.

2. Suit filed by the Appellant-Plaintiff has been dismissed by both the courts below. The learned Advocate appearing for the Appellant submitted that the suit notice issued under section 478 of the Bombay Provincial Municipal Corporations Act, 1949 is bad in law. He submitted that provisions of the Maharashtra Regional and Town Planning Act, 1966 have over-riding effect over the provisions of the said Act of 1949.

3. I have considered the submissions. From the concurrent findings of fact recorded by the courts it appears that the disputed shed has been constructed unauthorisedly. Nothing is placed on record of the suit to show that the construction of the shed is authorised and was made after obtaining due permission of the concerned Authority. It is very difficult to find fault with the said findings recorded by the courts below. Therefore, no fault can be found if the courts below have declined to grant discretionary relief of declaration and injunction. Hence, Second Appeal is dismissed with no orders as to costs.

JUDGE